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**DATE:** September 20, 2005**NUMBER OF PAGES:** Four (4)  
(Including transmittal)**TO:** Examiner Ivars C. Cintins**OF:** United States Patent and Trademark Office**TELEFACSIMILE NO.:** 571-273-8300**FROM:** Jennifer R. Mahalingappa, Esq.

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**Re:** U.S. Application No. 10/725,235  
Our Reference: BIC-023

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/729,235	
	Filing Date	December 1, 2003	
	First Named Inventor	Andrew J. CURELLO	
	Art Unit	1724	
	Examiner Name	Ivers C. GINTINS	
Total Number of Pages In This Submission	3	Attorney Docket Number	BIC-023

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply to Restriction Requirement <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks _____		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Jennifer R. Mahalingappa, Esq. Registration No. 47,765
Signature	<i>Jennifer R. Mahalingappa</i>
Date	September 20, 2005

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Signature	<i>Joy L. Clay</i>		

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SEP 20 2005

Application of: Andrew J. Curello *et al.*

Application No.: 10/725,235

Group Art Unit: 1724

Filed: December 1, 2003

Examiner: Ivars C. CINTINS

For: FUEL CELL SYSTEM INCLUDING AN ION FILTER

**RESPONSE TO RESTRICTION REQUIREMENT**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement mailed on August 23, 2005, the Applicants respectfully traverse the Restriction Requirement as the Restriction Requirement is improper. Pursuant to MPEP § 803, an application may be required to be restricted to one of two or more claimed inventions *only* if the two criteria for proper requirement for restriction are met:

- (A) The inventions must be independent or distinct as claimed *and*
- (B) There must be a serious burden on the examiner.

It is specifically noted in MPEP § 803 that if the search and examination of an entire application can be made without serious burden, the examiner must examine the entire application on the merits, even though the application includes claims to independent or distinct inventions.

The examiner has alleged as the *prima facie* showing of a serious burden that the inventions have acquired separate status in the art. However, the Applicants rebut this assertion. No serious burden to the examiner exists at this point, as the examiner has already conducted a complete search of all claims currently pending in the application. As proof, the Applicants point to the action on the merits issued by the examiner on March 15, 2005 ("the March 15 Action"), in which action the examiner fully considered all of the pending claims. Furthermore, in the March 15 Action, the examiner rejected all of the claims on the same basis, as being unpatentable pursuant to 35 U.S.C. § 103 due to U.S. Patent No. 6,723,460 in view of U.S. Patent No. 4,038,365. Therefore, the March 15 Action shows not only that all of the pending claims are capable of being examined in the present application, but that the examiner himself did not consider doing so a serious burden.

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Response to Restriction Requirement

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The response to the March 15 Action, filed by the Applicants on June 14, 2005, did not include amendments to the claims sufficient to necessitate a new search. Further, the examiner did not assert that such a search is either warranted or burdensome.

The Applicants specifically take no position as to the independence and/or distinctiveness of the invention or inventions set forth in the present application. No such position is necessary to traverse this Restriction Requirement.


In order to set forth a complete response in the event that the examiner does not withdraw the restriction, the Applicants provisionally elect to prosecute Group I as identified by the examiner including at least claims 1-14 and 20-23. Additionally, the Applicants elect to prosecute the filter location species including at least claims 1-3, 7-14, and 20-21, and the polymer medium form species including at least claims 1-8, 14 and 20-21. The claims to be considered for examination include claims 1-3, 7-8, 14, and 20-21. The examiner has designated claims 1, 7, 14, and 20 as generic to all of the claims vis-à-vis the species election. As such, Applicants respectfully reserve the right to have the claims readable on the non-elected species considered in this application should any of the generic claims be allowed.

In light of the preceding, Applicants believe that all of the presently pending claims are in condition for allowance, early notice of which would be greatly appreciated. The examiner is invited to telephone the undersigned attorney of record if he believes that such a call would materially advance the prosecution and eventual allowance of the present application.

Applicants believe that no fees are due in connection with the submission of this Response. If any fee is due, the Commissioner may charge appropriate fees to H.T. Than Law Group, Deposit Account No. 50-1980.

Respectfully submitted,

Date: September 20, 2005

  
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